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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,868	02/14/2002	Jim E. Cutler	47714-5019-03	6772
9629	7590	06/24/2005	EXAMINER	
MORGAN LEWIS & BOCKJUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			PORTNER, VIRGINIA ALLEN	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 06/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/073,868	CUTLER ET AL.
Examiner	Art Unit	
Ginny Portner	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 2/14/02.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-33 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-33 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

Claims 1-33 are pending.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11,22-23 drawn to compositions of a peptide mimotope specific for mannan of *Candida*, classified in class 530, subclass 300.
  - II. Claims 12-14, 17, 20 drawn to antibody compositions specific to trimannan or the acid stable region of mannan of *Candida albicans*, classified in class 530, subclass 387.5.
  - III. Claims 15, 18 are drawn to a method of immunization against candidiasis with antibodies specific to mannan of *Candida albicans*, classified in class 424, subclass 130.1.
  - IV. Claims 16, 21 drawn to a method of immunization against candidiasis with a peptide mimotope, classified in class 424, subclass 131.1.
  - V. Claim 19, (anti-idiotypic antibody peptides) drawn to a method of making peptides that are peptide mimics of a phosphomannan complex that bind to neutralizing antibodies of said complex obtained from *Candida albicans*, classified as class 424, subclass 137.1.
  - VI. Claims 24-30, drawn to polynucleotide compositions, classified in class 536, subclass 23.1.
  - VII. Claims 31-33, drawn to methods of vaccination against non-protein epitopes through administration of a polynucleotide that encodes a peptide mimic or the epitopes, classified in class 514, subclass 44.

1. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

2. The inventions are distinct, each from the other because of the following reasons:
3. The invention of group I is distinct from the invention of either one of groups II and VI because Group I is drawn to materially different compositions that require non-coextensive areas of search and consideration. For example, the peptides of the invention of Group I evidence a different structure, function and biological effects from the antibodies of Group II and the polynucleotides of Group VI.
4. Inventions II and (III or V) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product, specifically in methods of detecting antigen, in methods of purifying antigens, as well as in methods of generating peptides that evidence binding specificities of an anti-idiotypic antibody based vaccine.
5. Inventions II and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, or they have different modes of operation, or they have different functions, or they have different effects. (MPEP § 806.04, MPEP § 808.01). In the instant case the antibodies of Group II evidence different modes of operation, functions, and effects from the nucleic acids molecules of Group VI.
6. Inventions VI and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product

as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed could be used in a materially different process of using that product, specifically the isolated nucleic acid molecules may be used in methods of making a recombinantly produced polypeptide for induction of antibodies (in vitro assay), and in methods of generating a vaccine and immune response (in vivo).

7. The invention of group IV is distinct from the invention of group V because the method of Group IV administers a materially different composition that requires non-coextensive areas of search and consideration. For example, the peptide compositions of the invention of Group IV do not evidence the same chemical structure as the antibodies used to obtain the peptide mimics administered in the method of Group V.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification, recognized divergent subject matter, and because the searches required for the separate groups of inventions are non-coextensive, restriction for examination purposes as indicated is proper.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (571) 272-0862. The examiner can normally be reached on M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vgp  
June 2, 2005

*L. F. Smith*  
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SUPERVISORY PATENT EXAMINER  
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